

In re Patent Application of:  
**MCCARTHY ET AL.**  
Serial No. **10/779,402**  
Filed: **FEBRUARY 13, 2004**  
\_\_\_\_\_ /

**REMARKS**

The Examiner is thanked for the careful examination of the present application. Independent Claims 1, 9, 14, and 17 have been amended to more clearly define over the prior art. New Claims 22-28 have been added. In view of the amendments and arguments presented in detail below, it is submitted that all claims are patentable over the prior art.

**I. The Amended Claims**

Amended Independent Claim 1 is directed to a communications system that includes a plurality of servers connected together in a network for processing a plurality of different job types having respective different resource usage characteristics associated therewith. Each server, after beginning execution of at least one job, determines its own respective health metric based upon the at least one job being executed thereby and weighs the health metric based upon the respective resource usage characteristic of the at least one job. The resource usage characteristic represents resources being consumed by the at least one job.

The servers map the weighted health metrics for different resource usage characteristics to a common scale. The communications system includes a dispatcher for collecting the commonly scaled weighted health metrics from the servers by polling the servers for the weighted health metrics and distributing jobs to the servers based thereon.

Amended independent Claim 9 is directed to a load distributor for a plurality of servers. Amended independent Claim

In re Patent Application of:  
**MCCARTHY ET AL.**  
Serial No. 10/779,402  
Filed: **FEBRUARY 13, 2004**

---

14 is directed to a job distribution method for a plurality of servers. Amended independent Claim 17 is directed to a corresponding computer readable medium.

## **II. The Amended Claims Are Patentable**

The Examiner once again maintained his rejection of independent Claims 1, 9, 14, and 17 over the combination of Albert et al. and Richter et al. Albert et al. is directed to a system and method for selecting a server to handle a connection. The method includes receiving at a service manager a connection request intercepted by a network device having a forwarding agent that is operative to receive instructions from a service manager, the connection request having been forwarded from the forwarding agent on the network device to the service manager.

A preferred server is selected at the service manager from among a group of available servers. The preferred server is the server that is to service the connection request. Instructions are sent from the service manager to the forwarding agent. The instructions include the preferred server that is to service the connection request so that the connection request may be forwarded from the network device to the preferred server. The servers send feedback messages to the service manager. The service manager uses these feedback messages to perform load balancing.

The Examiner correctly recognized that Albert et al. fails to disclose that its servers map the weighted health metrics for different resource usage characteristics to a common scale. The Examiner also recognized that Albert et al. fails to

In re Patent Application of:

**MCCARTHY ET AL.**

Serial No. **10/779,402**

Filed: **FEBRUARY 13, 2004**

---

disclose a resource usage characteristic representing resources being consumed by at least one job.

In an attempt to provide these critical deficiencies, the Examiner combined Albert et al. with Richter et al. Richter et al. is cited as disclosing the use of different resource usage characteristics, and as disclosing a resource usage characteristic representing resources being consumed by at least one job.

As stated above, the Examiner cited Richter et al. as disclosing a resource usage characteristic representing resources being consumed by at least one job. To further define over the combination of Albert et al. and Richter et al., independent Claim 1 has been amended to recite each server, after beginning execution of at least one job, determining a respective health metric thereof based upon the at least one job being executed thereby and weighting the health metric based upon the respective resource usage characteristic of the at least one job, the resource usage characteristic representing resources being consumed by the at least one job.

Contrary to this feature now claimed in amended independent Claim 1, Richter et al. calculates an estimate of the resource consumption that will be required to perform a particular task prior to beginning execution of that job. As explained in paragraph 364:

Optional differentiated service policy 2020 may be applied to incoming requests that successfully pass overload protection policy 2010, prior to sending each incoming request to dispatching policy 2030 where admitted new

In re Patent Application of:

**MCCARTHY ET AL.**

Serial No. **10/779,402**

Filed: **FEBRUARY 13, 2004**

---

requests are forwarded to appropriate subsystems for processing.

That is, the system of Richter et al. executes the overload protection policy, which determines the resource utilization values for a given task, before ever executing that task. Therefore, Richter et al. fails to disclose a server, after beginning execution of at least one job, determining a respective health metric thereof based upon the at least one job being executed thereby and weighting the health metric based upon the respective resource usage characteristic of the at least one job, the resource usage characteristic representing resources being consumed by the at least one job, as recited in amended independent Claim 1. Albert et al. fails to provide this critical deficiency of Richter et al.

As such, amended independent Claim 1 is patentable over the combination of Albert et al. and Richter et al. Independent Claims 9, 14, and 17 contain similar recitations, have been similarly amended, and are patentable for the same reasons. The dependent claims, which recite yet further distinguishing details, are likewise patentable and require no further discussion herein.

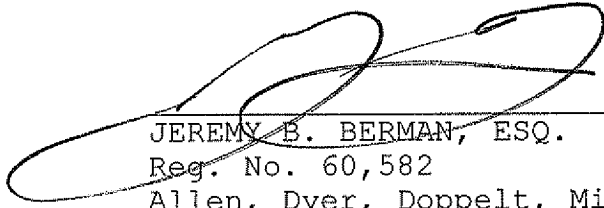
In re Patent Application of:  
**MCCARTHY ET AL.**  
Serial No. **10/779,402**  
Filed: **FEBRUARY 13, 2004**

---

**CONCLUSION**

In view of the amendments and arguments provided herein, it is submitted that all the claims are patentable. Accordingly, a Notice of Allowance is requested in due course. Should any minor informalities need to be addressed, the Examiner is encouraged to contact the undersigned attorney at the telephone number listed below.

Respectfully submitted,



JEREMY B. BERMAN, ESQ.  
Reg. No. 60,582  
Allen, Dyer, Doppelt, Milbrath  
& Gilchrist, P.A.  
255 S. Orange Avenue, Suite 1401  
Post Office Box 3791  
Orlando, Florida 32802  
407-841-2330